IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04 -01-2006

Coram:

THE HONOURABLE MR. JUSTICE M.KARPAGAVINAYAGAM
and
THE HONOURABLE MR. JUSTICE K.N.BASHA

Writ Appeal No.413 of 1998

Managing Director,
Brakes India Ltd.,
Padi, Madras-50. .. Appellant

Vs.

1.S.Packiaraj

2.The Assisant Commissioner of Labour,
Labour (Concilliation) - II,
Chennai-108. .. Respondents

Writ Appeal filed against the order dated 18.2.1998 passed by the learned single Judge in W.P.No.1908 of 1995.

WP.No.1908 of 1995: Petition presented to this Court under article 226 of the constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent in Petition No.A.989 of 1994 dated 14.1.1995 on the file of the 1st respondent and to quash the same.

For Appellant : Mr.C.Ramakrishnan for
Mr.S.Vishnu Mohan

For Respondent-1 : Mr.G.Masilamani, Senior Counsel for
Mr.S.Muthudurai

JUDGMENT

M.KARPAGAVINAYAGAM, J.

The Management of M/s. Brakes India Limited is the appellant herein. S.Packiaraj, the first respondent herein filed a writ petition challenging the order of the Assistant Commissioner of Labour, the second respondent herein, approving the action of the Management in dismissing the first respondent. The writ petition was allowed by the learned single Judge. Aggrieved by that, this writ appeal has been filed by the Management.

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2. The short facts leading to the filing of the appeal are as follows:

"(a) Mr.Packiaraj, the first respondent herein was an employee of the appellant Company. He was charge-sheeted for having committed the acts of misconduct by abusing his co-worker Padmanabhan in a filthy language and attacking him with a steel-tumbler on his forehead, which caused a cut injury on 28.6.1990. A domestic enquiry was instituted by the Management. Ultimately, on the basis of the enquiry report, the order of dismissal was passed by the Management on 20.2.1991.

(b) The Management filed an approval petition under Section 33 (2)(b) of the Industrial Disputes Act before the authority, viz., the Assistant Commissioner of Labour, the second respondent herein. On 2.8.1991, the Assistant Commissioner of Labour dismissed the approval petition filed by the Management.

(c) Aggrieved by that, the Management filed a writ petition in W.P.No.13773 of 1991 before this Court. Upon dismissal of the writ petition, the Management filed a writ appeal in W.A.No.835 of 1993 on the file of this Court before the Division Bench. Ultimately, on 27.10.1994, the First Bench of this Court allowed the writ appeal and remanded the matter again to the Assistant Commissioner of Labour to consider the case afresh and pass order after giving opportunity to both parties to adduce additional evidence. The Division Bench further directed that the Assistant Commissioner of Labour has to decide the approval petition on or before 15.1.1995.

(d) Accordingly, the Assistant Commissioner of Labour conducted an enquiry and allowed the parties to adduce additional evidence by the Management as well as the rebuttal evidence by the workman. After enquiry, final orders were passed by the Assistant Commissioner of Labour on 14.1.1995 granting approval for the action of the Management dismissing the workman from service for his misconduct.

(e) Challenging the same, the workman filed writ petition in W.P.No.1908 of 1995. After hearing the counsel for the parties, the leaned single Judge by his order dated 18.2.1998 allowed the writ petition setting aside the approval granted by the Assistant Commissioner of Labour and directed the Management to reinstate the workman in service with all back wages and all other consequential benefits. Feeling aggrieved by this order, the Management has challenged the same in this writ appeal."

3. Mr. C.Ramakrishnan, the learned counsel appearing for the appellant, would cite a number of authorities in order to point out that the learned single Judge ought not to have interfered with the order of granting approval on finding that there is a prima facie

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case, as it would amount to exceeding the jurisdiction vested in him under Article 226 of the Constitution. The authorities are as follows:

1) U.P. STATE SPINNING CO. LTD. v. R.S. PANDEY (2005(8) S.C.C.264);

2) U.P. STATE BRIDGE CORPN. LTD. v. RAJYA SETU NIGAM S. KARAMCHARI SANGH (2004(4) S.C.C.268);

3) NATIONAL FERTILIZERS LTD. AND ANOTHER v. P.K. KHANNA (JT 2005 (8) S.C.125);

4) MARTIN BURN, LTD. v. BANERJEE (1958 I L.L.J. 247);

5) BANGALORE WOOLLEN, COTTON AND SILK MILLS CO. v. DASAPPA (1960 II L.L.J.39);

6) SRI RANGA VILAS G.S. AND WVG. MILLS v. I.T. (1959 II L.L.J.786);

4. On the other hand, Mr. G.Masilamani, the learned senior counsel appearing for the first respondent, would submit that the order of the learned single Judge setting aside the order of approval by the Assistant Commissioner of Labour is perfectly valid in law, since the order by the Assistant Commissioner of Labour would suffer from infirmity, as the proper opportunity was not given to the workman, despite the direction given by the First Bench, He would cite the following authorities:

1) THE STATE OF MADRAS v. KANDASAMY (1972 II L.L.J.374);

2) R.K.KINDRA v. DELHI ADMINISTRATION (1984 II L.L.J.517);

3) CENTRAL BANK OF INDIA v. PRAKASH CHAND JAIN (A.I.R.1969 S.C.983);

4) KULDEEP SINGH v. COMMISSIONER OF POLICE (1999(2) S.C.C.10);

5) BHAGAT SINGH v. THE STATE OF H.P. (1983 (2) S.C.C.442).

5. We have heard the learned counsel for both the parties and given our thoughtful consideration to the rival contentions.

6. At the outset, it would be appropriate to refer to settled law laid down by the Supreme Court dealing with the powers of the High Court under Article 226 of the Constitution, while considering

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the orders passed by the authorities under the Industrial Disputes Act in labour matters.

7. In U.P.STATE SPINNING CO. LTD. v. R.S. PANDEY (2005(8) S.C.C.264), the Supreme Court would hold as follows:

> "The scope of judicial review under Art.226 in labour matters is very limited. Writ petition under Art.226 should not be entertained when the statutory remedy is available under ID Act 1947 unless exceptional circumstances are made out."

8. In U.P. STATE BRIDGE CORPN. LTD. v. RAJYA SETU NIGAM S. KARAMCHARI SANGH (2004(4) S.C.C.268), the Apex Court would make the following observation:

> "The awards passed by the authorities constituted under the I.D. Act are no doubt amenable to the jurisdiction of the High Courts under Art.226 as also to the jurisdiction of this Court under Art.32 but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them. … … … It is an established practice that the extraordinary jurisdiction under Art.226 should have refused to do so where there are disputed questions of fact. "

9. In KULDEEP SINGH v. COMMISSIONER OF POLICE (1999(2) S.C.C.10), the Supreme Court would make the following observation:

> "Only when the finding of the Enquiry Officer/Tribunal is perverse, the High Court can interfere."

10. In R.K.KINDRA v. DELHI ADMINISTRATION (1984 II L.L.J.517), it is held as follows:

> "In the absence of evidence to prove the charges, the finding of the Enquiry Officer against the workman can be disturbed and interfered with by the High Court under Article 226."

11. In CENTRAL BANK OF INDIA v. PRAKASH CHAND JAIN (A.I.R.1969 S.C.983), it is observed thus:

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"If the finding of the Enquiry Officer is perverse, the High Court can interfere under Article 226."

12. The crux of the decisions could be given in a nutshell which is as follows:

"The jurisdiction under Article 226 is an extraordinary remedy subject to several self-imposed constraints. It is an established practice that the extraordinary jurisdiction under Article 226 should have refused to do so where there are disputed questions of fact and only when the finding of the Enquiry Officer is perverse, the High Court can interfere under Article 226."

13. In the light of the above legal situation, let us now go into the merits of the matter to find out whether the findings given by the learned single Judge for interfering with the order passed by the Assistant Commissioner of Labour granting approval for the action of the Management are valid or not.

14. While dealing with the said question, let us now give the gist of the findings given by the Assistant Commissioner of Labour, which is as follows:

"From the records available, it is found that the Management's action is in consonance with the Standing Order. He was given due opportunity by the Management to defend the case during the enquiry. He cross-examined the witnesses produced by the Management. The workman was paid one month's wages during the course of enquiry as per the Standing Order. After the action taken, the Management within the stipulated time applied to the authority for granting approval for the action. The jurisdiction of the Assistant Commissioner of Labour while entertaining the approval petition under Section 33(2) of the I.D. Act is very limited. All that the authority has to consider is whether a prima facie case has been made out for granting approval. The authority does not sit as a court of appeal. As per the direction of the Division Bench in the writ appeal, opportunity for adducing additional evidence and rebuttal evidence was afforded to the parties concerned. Accordingly, the Management produced two witnesses and defence produced two rebuttal witnesses. They were examined in chief and cross. Out of the three defence witnesses mentioned in the memo, two witnesses were produced and enquiry was concluded on 13.1.1995. The Division Bench gave a time limit only up to 15.1.1995. Accordingly, the order was pronounced in time. The evidence of M.W.1 was looked into. According to him, the workman threw the steel tumbler on his face and caused a cut injury. This has been corroborated by the evidence of two other witnesses. There is a medical evidence also. The defence witness Dr.Rajasekaran in his rebuttal evidence explained the nature of the out-patient chit Ex.M15. In cross-examination, he

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stated that he never worked as a Casualty Medical Officer. As such, he is alien to the issue and totally unconnected with the Management. In the light of the evidence adduced by the Management, it is clear that there exists a prima facie case for grant of approval."

15. However, the learned single Judge, while allowing the writ petition, set aside the said order of approval for the following reasons:

(1) The order passed by the Assistant Commissioner of Labour granting approval to the action of the Management in dismissing the workman is contrary to the directions given by the Division Bench in its order dated 27-10-1994 in W.A. No.835 of 1993 as the workman was not given opportunity to produce the defence witness.

(2) Despite the directions of the Division Bench, the trial authority, viz., Assistant Commissioner of Labour did not go into the merits of the case by analysing the evidence in complete details.

(3) Though the Assistant Commissioner of Labour was very particular in observing the time-frame fixed by the Division Bench, but failed to follow the other directions given by the Division Bench by not providing opportunity to the workman to adduce additional evidence.

(4) The additional document, Ex.M-38 and its' authenticity was doubtful as the same was produced by the Management after four and a half years without any proper explanation for the delay.

(5) As per Ex.M-5 and Ex.M-22, the injury sustained by Padmanabhan (MW-1) was stated as 'fall injury'. This would falsify the evidence of the co-worker Santhanam.

(6) The impugned order passed by the Assistant Commissioner of Labour solely on the basis of Ex.M-38 is not on the basis of sufficient evidence.

(7) No second show cause notice was issued to the workman.

16. On going through the entire records and also the judgment of the learned single Judge, it is clear that the learned single Judge has exceeded his jurisdiction vested in him under Article 266 of the Constitution. On going through the facts, it is seen that the workman abused MW-1 in a filthy language and threw a water tumbler on his forehead, which resulted in causing a bleeding cut injury on his forehead. Medical evidence is available on record to show that there was a cut injury on the forehead of MW-1. The Division Bench, while setting aside the order of the earlier Assistant Commissioner of Labour refusing to grant approval, directed the trial authority to

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allow the Management to adduce additional evidence and also the workman to adduce rebuttal evidence in order to find out the existence of a prima facie for grant of approval to the Management's action of dismissing the workman from service. Therefore, the Assistant Commissioner of Labour is expected to go through the entire material and evidence available on record, which was adduced by both parties in order to find out the existence of a prima facie case for grant of approval. In other words, the scope of enquiry under Section 33(2)(b) of the I.D. Act is very limited and it is only a fact finding proceedings to find out the existence of a prima facie case for grant of approval.

17. There are enough material and evidence on record to show that the workman picked up a quarrel with MW-1, abused him in filthy language and caused him a bleeding cut injury on his forehead by throwing a water tumbler. The Assistant Commissioner of Labour, on consideration of the entire materials available on record and the evidence adduced by both the parties, rendered a finding of fact that there exits a prima facie case for grant of approval to the Management's action of dismissing the workman from service. Existence of a prima facie case does not mean the case proved to the hilt, but the case which can be said to be established with the evidence which has let in support of the same were believed. Further, in matter like this, where the jurisdiction of the trial authority under Section 33(2)(b) of the I.D. Act is limited, adequacy of evidence or its sufficiency or satisfactory character would be irrelevant. On the other hand, as stated above, the Assistant Commissioner of Labour has rendered a finding of fact, on the basis of materials available before it, that there was a prima facie case for granting approval.

18. Unfortunately, learned single Judge, unmindful of the settled legal position and the findings and the reasoning given by the Assistant Commissioner of Labour, has straightaway gone into the oral and documentary evidence and embarked upon the appreciation of evidence adduced by the parties and observed that the evidence adduced by the Management is unbelievable. The approach of the learned single Judge is wholly erroneous and beyond the scope of his jurisdiction under Article 226. It is trite law that under Article 226, High Court cannot go into the disputed questions of fact.

19. The other reasoning given by the learned single Judge for upsetting the order passed by the Assistant Commissioner of Labour is denial of opportunity to the workman to examine his witness Thirumavazhavan. On the perusal of the records, we find that the workman filed a petition on 12-1-1995 before the Assistant Commissioner of Labour for permission to produce three witnesses to tender evidence on 13-1-1995 and undertook to produce all of them on the said date. Permission was granted by the Assistant Commissioner

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of Labour. The workman, however, produced only two witnesses and failed to produce the third witness Thirumavazhavan. The workman requested the Assistant Commissioner of Labour to summon the said witness by issue of summons. The Assistant Commissioner of Labour, keeping in mind the time-frame fixed by the Division Bench for passing orders going to expire on 15-1-1995 and also of the fact that he has no powers under the Act to issue summons, refused the request and proceeded to pass orders. The Assistant Commissioner of Labour noticing the conduct of the workman and his counsel observed that there is a willful and wanton conduct of the defence to protract the proceedings. In these circumstances, the observation of the learned single Judge that the workman was denied the opportunity to produce the defence witness is wrong.

20. That apart, the learned single Judge disbelieved the evidence of Additional Management Witness, who happened to be the eye-witness. The Assistant Commissioner of Labour, as indicated above, has to find out only prima face case and the said authority need not go into the question whether the facts have been proved or not. As such, the learned single Judge erroneously concluded that the oral testimony of this witness should not have been accepted by the Assistant Commissioner of Labour. By this, the disputed question of fact has been decided by the learned single Judge under Article 226 of the Constitution. Admittedly, there is no finding by the learned single Judge that the reasonings by the Assistant Commissioner of Labour in the impunged order are perverse.

21. One other reason the learned single Judge has pointed out is that second show cause notice regarding punishment was not given. The authority concerned should go by the Standing Order of the Company alone. Approval cannot be refused merely on the basis of the fact that no second show cause was given. Admittedly, there is no provision for the second show cause notice in the Standing Order.

22. Thus, in view of the discussion made above, we cannot hold that the findings given by the learned single Judge disturbing the finding of fact rendered by the Assistant Commissioner of Labour, the second respondent herein, with reference to the prima facie case for grant of approval, are valid. Hence, the order of the learned single Judge is set aside and the writ appeal is allowed. No costs.

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The Assisant Commissioner of Labour,
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+ one cc to Mr.S.Vishnu Mohan, Advocate SR.No.424
+ one cc to Mr.K.Kanagaraj, Advocate SR.No.564

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